

**BEFORE THE APPEALS BOARD
FOR THE
KANSAS DIVISION OF WORKERS COMPENSATION**

CHARLES A. JENKINS
Claimant

VS.

HORTON, INC.
Respondent

AND

INSURANCE COMPANY OF NORTH AMERICA
Insurance Carrier

AND

KANSAS WORKERS COMPENSATION FUND

Docket No. 189,578

ORDER

Claimant requests review of the Award entered by Administrative Law Judge John D. Clark dated September 14, 1995. The Appeals Board heard oral argument on January 10, 1996 in Wichita, Kansas.

APPEARANCES

Claimant appeared by and through his attorney, Cortland Q. Clotfelter of Wichita, Kansas. Respondent and its insurance carrier appeared by and through their attorney, Vincent A. Burnett of Wichita, Kansas. The Workers Compensation Fund appeared by its attorney, Steven L. Foulston of Wichita, Kansas.

RECORD AND STIPULATIONS

The record considered by the Appeals Board and the parties' stipulations are listed in the Award. In addition, at oral argument the respondent announced it was dismissing the Workers Compensation Fund from this proceeding.

ISSUES

The Administrative Law Judge found that claimant sustained personal injury by accident arising out of and in the course of his employment with the respondent through his last day of work as a welder in October 1993. However, the Administrative Law Judge also found that claimant did not sustain permanent impairment of function as a result of the work-related injury and, therefore, denied additional medical benefits and permanent partial disability benefits. Claimant requested this review and contends he did sustain a

permanent injury and, thus, is entitled to permanent partial disability benefits. Respondent requested the Appeals Board to review the issue of whether claimant sustained personal injury by accident arising out of and in the course of his employment with the respondent. Therefore, the issues now before the Appeals Board on this review are:

- (1) Whether claimant sustained personal injury by accident arising out of and in the course of his employment with the respondent.
- (2) The nature and extent of claimant's injury and disability, if any.

FINDINGS OF FACT AND CONCLUSIONS OF LAW

After reviewing the entire record, the Appeals Board finds as follows:

The Award denying permanent partial disability benefits entered by the Administrative Law Judge should be reversed and this case should be remanded to the Judge to determine the remaining issues.

The Appeals Board agrees with the finding of the Administrative Law Judge that claimant sustained a neck injury while working for the respondent in performing his welding duties. This conclusion is supported not only by claimant's testimony, but also by that of both Drs. Blaty and Eyster. Board-certified orthopedic surgeon, Robert Eyster, M.D., testified that he saw claimant on January 5 and January 26, 1994. He believed claimant was having neck problems due to chronic muscular ligamentous irritation caused by his wearing a welder's helmet. Board-certified physiatrist Lawrence R. Blaty, M.D., testified he believed claimant sustained a cervical ligament injury related to both flipping his welding helmet closed with his neck and performing other physically demanding activities required by his job.

The Appeals Board finds that claimant has sustained permanent injury and impairment as a result of his neck injury and he is entitled to permanent partial disability benefits pursuant to K.S.A. 44-510e. Despite the efforts of both Dr. Eyster and Dr. Blaty, claimant continues to experience problems with his neck which have now existed for more than ten years. After treating claimant for approximately three months and prescribing medications, physical therapy and a functional capacity evaluation, Dr. Blaty believes claimant has a 5 percent whole body functional impairment due to his neck injury. Because of the chronicity of claimant's symptoms, upon which both Drs. Eyster and Blaty agree, the Appeals Board finds claimant has sustained permanent injury and impairment as a result of his work-related accidental injury.

This proceeding should be remanded to the Administrative Law Judge to determine the remaining issues of nature and extent of disability, average weekly wage and any and all other remaining issues.

AWARD

WHEREFORE, it is the finding, decision, and order of the Appeals Board that the Award entered by the Administrative Law Judge denying claimant permanent partial disability benefits and additional medical benefits should be, and hereby is, reversed and set aside; that the claimant has sustained permanent injury and impairment as a result of the October 1993 neck injury and is entitled to receive permanent partial disability benefits pursuant to K.S.A. 44-510e; and that this case should be, and hereby is, remanded to the Administrative Law Judge to determine the nature and extent of claimant's disability, average weekly wage and any and all remaining issues that are necessary for final adjudication which is consistent with this Order.

IT IS SO ORDERED.

Dated this ____ day of May 1996.

BOARD MEMBER

BOARD MEMBER

BOARD MEMBER

c: Cortland Q. Clotfelter, Wichita, KS
Vincent A. Burnett, Wichita, KS
Steven L. Foulston, Wichita, KS
John D. Clark, Administrative Law Judge
Philip S. Harness, Director